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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 273

RUSSELL SCOFIELD, LAWRENCE HANSEN, EMIL STEFANEC, and GEORGE KOZBIEL,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD and INTERNATIONAL UNION, UAW-AFL-CIO,

Respondents.

AMICUS CURIAE BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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PETITION SUPPORTED.

Russell Scofield, Lawrence Hansen, Emil Stefanec and George Kozbiel have petitioned for a Writ of Certiorari to review the decree of the United States Court of Appeals for the 7th Circuit entered in this case on April 16, 1968.

The Petition was docketed in the Supreme Court on July 6, 1968 as No. 273, October Term, 1968.

PARTIES' CONSENTS.

The Consent of the Office of the Solicitor General of the United States to the filing of an Amicus Curiae brief was sought and obtained on July 22, 1968. The Consent of the Union, (International Union, United Automobile Aerospace and Agricultural Implement Workers of America-UAW) was sought on July 1, 1968 and obtained on July 3, 1968.

INTEREST OF AMICUS CURIAE.

The interest of the Amicus Curiae is almost patent. It derives principally from two sources. It derives from the nature of the subject matter of the question presented; it derives from the nature, purpose and objectives of the Illinois Manufacturers Association.

The Illinois Manufacturers Association is an organization comprised of manufacturers located in every section of the State of Illinois. It is at once the largest and oldest organization of its kind in the United States. Five Thousand Three Hundred (5,300) industrial establishments comprise its membership. Thirty Thousand executives comprise its management personnel. Over one million persons are employed in the establishments. Manufactured are a wide range of products. Over $19 billion

of goods (value added by manufacturer) are involved annually. Ninety-five percent of the manufacturing output of the State is produced by member firms. While practically all representative industries in Illinois of all sizes are members of the IMA, the great bulk of the member firms (more than 1500 of them) employ fewer than 20 persons. Fifty-two industrial leaders comprise the Board of Directors and Advisory Board of the IMA. Their companies are a cross section of industry classifications. They range from the smallest to the largest in employment and are distributed geographically throughout the State. Through representation on the Board of Directors, the Advisory Board and IMA committees, and through cooperation with the Illinois Industrial Council (an affiliate of the IMA), practically every industrial community in Illinois participates in the formulation of IMA policies. In order to implement its policies and programs, IMA maintains a staff of 30 persons in its Chicago and Springfield offices. Staff members deal with the problems of Illinois manufacturing industry.

The subject matter of the Question Presented upon which review is sought touches upon the very nerve center of the Collectively Bargained employment relationship. In the employment relationship the Illinois Manufacturers Association can be seen to have a substantial and vital interest.

QUESTION PRESENTED.

Whether a union restrains or coerces an employee in the exercise of a right guaranteed by Section 7 of the National Labor Relations Act, in violation of Section 8(b)(1)(A) of the Act, when the union fines an employee, and attempts to collect such fine by court action, because the employee performed work and earned wages in excess of certain production quotas established and enforced by the union.

In the Court below an intensive concentration upon the explicit issue therein raised may have led to less than sufficient attention to the effect of the holding below upon the whole of the law of the labor relationship.

For a Union to restrain or coerce an employee in his exercise of the rights guaranteed under Section 7 of the Act is to wrong him unless the wrong is excused by the proviso of Section 8(b)(1).

That proviso intends to leave untrammeled the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership.

The Court below seems to have held that this permissiveness embraces the right to fine for breach of a Union rule prohibiting production in excess of a union-set ceiling. That the employee was restrained and coerced is conceded. That the restraint or coercion was excused because it was for breach of a rule with respect to acquisition or retention of membership seems to have been the holding.

REASONS FOR GRANTING THE WRIT.

The Writ should issue because:

1.) The Public Policy of the United States to promote and encourage the practice of Collective Bargaining is damaged by the holding below;

2.) An unwarranted application of a holding of this Court in another case is said to require the holding below; (*National Labor Relations Board* v. *Allis Chalmers Manufacturing Co.*, 338 U.S. 175;)

3.) The deeper significances of the holding below have escaped attention;

4.) A sister Circuit properly held *contra* to the holding below; (*Associated Home Builders of the Greater East Bay, Inc.* v. *National Labor Relations Board*, 352 Fed. 2d 745;)

5.) The opinion below is, at the very least, in need of clarification;

6.) A subsequent opinion of this Court has established at least one boundary to union fining beyond which the Union may not go. (*National Labor Relations Board* v. *Industrial Union of Marine & Shipbuilding Workers of America*, A.F.L.C.I.O., 68L.R.R.M. 2257.)

1.) It is the declared policy of the United States to encourage the practice and procedure of Collective Bargaining. National Labor Relations Act (61 Stat. 136, 29 U.S.C. 151, et seq.), Section 1. Absolutely requisite, the ingredient "sine qua non", to Collective Bargaining is good faith bargaining and consequent Agreement. Neither party to the process can leave the bargaining table whereon agreement has been reached, free or at liberty to alter or change the commitments mutually made. Not precluded by this statement are those honest differences of interpretation and application which provide the day-in day-out grist of contract implementation. Definitely precluded is anything like a license to either of the parties to the relationship, as a matter of *right*, unilaterally to alter or change the terms of the commitment.

2.) This Court's holding in *Allis Chalmers* (*supra*) is regarded by the Court below as controlling upon it. The case is readily distinguishable. The rationale supporting the right of a Union to discipline members who cross picket lines established during the course of a legal strike, a right arguably necessary to the very survival of the labor organization, cannot be expanded to embrace the right to fine an individual member during the life of a Collective Bargaining Agreement for giving his personal meaning to his promise to supply a given quantity of his labor.

3.) The deeper significance of the issue upon which review is sought becomes more evident when consideration is given to so basic a concept as the one set forth in (2) above. Nothing less than the nature of the Labor Agreement comes into issue when the case is cast in this light.

Parties to a Labor Agreement have reached accord upon the value of a measurable amount of human labor. Through their Agent for Collective Bargaining, employees market their labor. They are free to propose that they deliver a unit of their labor which will produce an indeterminable amount of production. They are free to propose that they can be expected to produce an explicit quantity of production over an indeterminate amount of time. Whichever is the case, when the Labor Agreement is concluded, the supplier of labor is obliged by virtue of his commitment to abide by his promise. He is not free to return to the union hall and unilaterally set a limit upon his commitment.

To issue the Writ sought will further assure that ever more specific content will be given to what is thus encouraged; to allow the decision below to stand will promote confusion and uncertainty.

4.) The Ninth Circuit Court of Appeals, in *Associated Home Builders of the Greater East Bay, Inc.* v. *National Labor Relations Board,* 352 Fed. 2d 745, confronted with the issue of validity of a Union fine imposed upon members employed in the building trades who exceeded a ceiling set by Union rule, held, and Amicus Curiae thinks properly held, that the Union fine was violative of the whole conception of the relationship in the process of Collective Bargaining. The Court remanded the whole dispute to the Board for disposition in accord with the observations summarized. The Board had upheld its Trial Examiner's finding that no Sec. 8(b)(1)(A) violation had occurred. The Board had cited its holding in instant case as precedent, citing *Local 283, U.A.W. (Wisconsin Motor Corporation)*, 145 N.L.R.B. No. 109. In its observations, the Court said:

"The rules relating to the limitation of production are plainly rules adopted for the purpose of establishing the terms and conditions of employment for Union members. The rule is not directed merely to the employees; it has a direct impact upon the employer . . . It follows that the rule imposed here cannot come within the proviso of Sec. 8(b)(1)(A), for this was not a mere prescribing by the Union of rules 'with respect to acquisition or retention of membership therein' . . ."

5.) The opinion below requires clarification because of ambiguity, evidenced by this excerpt:

"Petitioners argue that the present rule circumvents the bargaining process, and that the Union should have to obtain a provision against incentive pay through Collective Bargaining with the Company. Since petitioners concede that the Union can validly impose ceilings through collective bargaining, it is not great departure to allow them to be imposed by a disciplinary rule enforcing ceilings already established by collective bargaining. If a union has validly established a policy against over-production, it must have the concomitant power to discipline members who violate ceilings."

If *Allis Chalmers* (*supra*) was the basis for denying review, the above reasoning cannot be summoned in support. The one excludes the necessity of the other.

5a.) The 7th Circuit Court of Appeals reads the law as holding that the Labor Organization can fine under these circumstances, on the ground that the establishment of a ceiling on production is a matter internal to the discipline of the Union. 67 L.R.R.M. at page 2675.

If the decision below stands for the proposition that a Union can unilaterally establish a production ceiling and fine a member for exceeding it because the matter

is "internal to union disciplines" it should not stand as law. Such a rule is not internal only but vitally affects what is in essence a *relationship,* a thing which has elements of internalness of both parties to the relationship, and things which are in fact internal/external. The Union has bi-partite functions to exercise; the Management has bi-partite functions to exercise. In the exercise of such functions it is blindness to assert that such functions are internal only. *Associated Home Builders* (*supra*).

5b.) If the decision below stands for the proposition that the Union fine was valid *because* it constituted an enforcing of a collectively bargained condition of employment, and is valid for that reason and *not* for the reason that it was internal to union interest only, the importance of such a pronouncement should not be obscured.

The opinion of the Court of Appeals *may* have been intended to rule that the Collective Bargaining Agent can negotiate for a ceiling upon production. But this is not clear.

6.) Union expulsion from membership as a penalty for going to the National Labor Relations Board is violative of 8(b)(1)(A). *National Labor Relations Board* v. *Industrial Union of Marine & Shipbuilding Workers of America,* A.F.L.C.I.O., 68 L.R.R.M. 2257. This case is a clear indication of a limit beyond which a Union may not go, even in a matter of internal concern, if substantial considerations of an overriding nature are present. Such considerations have been shown to be present in instant case.

CONCLUSION.

If *Allis-Chalmers* is good law, and if *Marine & Shipbuilding* is good law, somewhere between the extreme of the right of the Union to fine, pursuant to *Allis-Chalmers*, and the wrong of Union fining, pursuant to *Marine & Shipbuilding*, is the razor's edge.

Amicus Curiae Illinois Manufacturers Association suggests that the present case furnishes an opportunity to set a line of demarcation. As Amicus Curiae, it supports issuance of the Writ.

Respectfully submitted,

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